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ORDER.

No. PLM 592 LLD 62, dated Bangalore, the 7th March 1963.

WHEREAS the Government of Mysore are of opinion that an Industrial Dispute exists between the Workmen and the Management of Sri Durgaparameshwari Motor Service, Kadri, Mangalore-1, on the points noted below;

AND WHEREAS the Government of Mysore consider it desirable to refer the dispute for adjudication.

NOW, THEREFORE, in exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Government of Mysore hereby refer the said dispute for adjudication to the Labour Court at Hubli.

Points of Dispute.

1. Are the workmen of Sri Durgaparameshwari Motor Service, Kadri, Mangalore entitled to basic scales of pay as noted below or at any other rate with effect from 1st January 1961? How should their existing pay of wages be fitted into the revised scales of pay?

	Rs.
(a) Highly skilled workmen:	
Mechanic, Work Supervisor, Foreman ..	125–10–275
(b) Skilled workmen:	
Fitter, Blacksmith, Welder, Electrician, Carpenter, Tinker, etc.	82–7–159
(c) Semi-skilled workmen:	
Assistant to skilled workers, Apprentice, etc.	72–5–82
(d) Un-skilled workmen:	
Watchman, Attender, Cleaner, Office Boy, Mazoor, etc.	60-3-90
(e) Heavy Vehicle Driver ...	125-7½-275
(f) Light Vehicle Driver ...	100–5–150-7–185
(g) Bus Conductor ...	75–5–150

		Rs.
(*h*)	Lorry Conductor ...	60-5-135
(*i*)	Office Clerk, Booking Clerk, Checking Inspector, etc.	125-5-150-10-300

(*j*) Are the workmen entitled to Dearness Allowance at a flat rate of Rs. 75 per month or at any other rate?

2. Are the workmen of Sri Durgaparameshwari Motor Service, Kadri, Mangalore entitled to a bonus equivalent to three months wages or at any other rate for the year 1959-60?

3. Are the workmen entitled to leave facilities as follows or at any other rate during every year of their service?

(*a*) Privilege Leave of 30 days with full wages.

(*b*) Casual Leave of 15 days with full wages

(*c*) Festival Holidays of 15 days with full wages.

(*d*) One month sick leave with full wages and another one month sick leave with half wages.

By Order and in the name of the Governor of Mysore,

H. L. LINGARAJ URS,

1127 *Dy. Secy. to Govt., P. H., Lab. & Ml. Admn. Dept.*

photograph Exhibit P-4 was taken. He did not attend any meetings of the Swatantra Congress party.

39. The respondent adimts that Exhibit P-18 is a hand-bill issued jointly by him and Sri Budhadas, a candidate of the Swatantra Congress party for Lok Sabha. Exhibits P-19 and 20 are hand-bills issued by him and Sri Budhadas respectively. He is not sure as to whether Exhibits P-18 to 20 were got printed by him or not. However, he did not get Exhibit P-19 printed. The respondent was confronted with documents Exhibits P-18 to 20, because his name appears in them and his symbol, *i.e.*, scales is to be found in them. He does not know who got the posters Exhibit R-2 printed. The photograph Exhibit P-4 appears to have been taken, according to the respondent, in one of the meetings held in connection with Taluk Board Elections. He states that the middle portions of the flag at Exhibits P-4 (*a*) and P-21 (*a*) are not clear. It is necessary to mention that the scales can be seen at Exhibits P-4 (a) and Exhibit P-21 (a). The learned advocate for the petitioner argued that, as the respondent is capable of telling a falsehood, his evidence should not be relied upon. I do not think that, in view of the circumstances of the case, it would be proper to apply the doctrine of "falsus in uno, falsus in *omnibus*" to the evidence of the respondent. The testimony of a party should be scrutinised applying the same principles that would be applied to the evidence of a witness. Exhibits P-22 series are the hand-bills printed at Pragati Press in support of the respondent's candidature. In the opinion of the respondent, the word "Congress" is not the monopoly of any organisation, but it only means a meeting of several persons. The respondent is to be found in the photographs Exhibits P-23 and 24, but he cannot recall the occasions on which they were taken. Sri Byatiga Bovi a Congress candidate in Taluk Board Elections in 1960 had the scales as his symbol (Exhibit P-25). The respondent is not aware of the pamphlets Exhibits P-26 to 28.

40. It is not within the scope of the election petition as to the circumstances that made the respondent sever his connections with the Congress organisation and stand as a candidate of their newly fromed Swatantra Congress party. The respondent admits that he criticised the Congress organisation and some of its members during his election campaign. Though he admits that scales was his symbol, he has denied to have displayed it at the meetings on the tricolour flag similar to the Congress. In exercise of the powers conferred by sub-rule (1) of Rule 5 of the Conduct of Election Rules, 1961, the Election Commission has published a list of symbols through S. O. 2316, dated 19th September 1961. In it, the reserved symbols for Mysore State are (1) two bullocks with yoke on (Congress) and (2) Hut (Praja Socialists). Nine other symbols have been shown as free symbols and scales is one of them. As far as the selection of the symbol is concerned, there can be no ground for the petitioner to raise any objection. The contention of the petitioner is that the tricolour flag of the Congress should not have been used substituting scales for Charka. It is not shown that the shape and form of a flag or the colour arrangement in it has been reserved for any organisation under any provision of law. The contention of the petitioner appears to be

similar to a passing off action with respect to a trade mark. When the petitioner or the organisation which he represented had no special rights in the tricolour flag, it cannot be said that the Respondent ought not to have used it. If illiterate electors were victims of the use of the tricolour flag by the Respondent, then he cannot be blamed for it. In view of the extracts of the Newspapers that have been exhibited in the case, it is difficult to accept that the Respondent made the electors believe that he was a candidate of the Congress organisation. The very fact that he was criticising the Congress organisation and some of its members was sufficient to convey to the electors that he was not representing the Congress.

41. I asked the learned Advocate for the petitioner as to the provision of law under which misrepresentation can be made a ground for declaration of the election to be void. He candidly admitted that there was no specific provision in that regard and the matter may be brought under S. 100 (1) (d) (iii), R.P. Act, and it may be held that the reception of the votes was improper. I do not think this provision of law is applicable to such misrepresentations as alleged in this case. The learned Advocates appearing for both the parties informed me that there was a provision with respect to such misrepresentations in the erstwhile Mysore State Election Law and that that provision has not been incorporated in the R.P. Act. In these circumstances, even if it is presumed that there was some misrepresentation made by the Respondent during his election campaigns, even then that would not affect the result of the elections. However, in the instant case, in view of the Newspaper extracts produced in the case and the admitted fact that the Respondent was criticising the Congress organisation and some of its members in his election meetings, it cannot be held that he represented himself to be a Congress candidate and secured votes by misrepresentation. Issue No. 4 is decided against the petitioner and in favour of the Respondent.

42. *Issue No. 5.*—In view of the findings of Issues 1 to 4, the petitioner would not be entitled to any relief.

43. Relying on E.L.R. 9 at page 93 and 8 E.L.R. 424, it is urged on behalf of the petitioner that, as Exhibit P-22(d) is admitted by the Respondent in which votes are invoked referring to God, this Tribunal should take cognizance of it. It is advisable to note that during the course of the cross-examination, a number of documents including Exhibit P-22 series were put to the Respondent and he said that those hand-bills had been printed at Pragati Press in support of his candidature. The specific portion in the hand-bill which refers to God was neither shown to him nor was he given an opportunity to offer his explanation with respect to it. In the circumstances, it would not be proper for this Tribunal to take cognizance of a corrupt practice which has not been originally alleged by the petitioner. As observed in A.I.R. 1962 Punjab 129, the Election Tribunals are expected to keep in their mind the precise allegations in the pleadings and that a party should not be permitted to travel outside the pleadings and the Issues. In view of this, I decline to take cognizance of the commission of a corrupt practice by the Respondent on the basis of the hand-bill Exhibit P-22(d).

44. Charges of corrupt practices under S. 123(2)—Undue influence—and (5)—Hiring or procuring of vehicle for conveying the electors—have not been proved and this is the finding recorded under S. 99, R.P. Act.

45. The Respondent has incurred expenses of Rs. 16.75 nP. in this Tribunal. The fee of the Advocate is fixed at Rs. 500. In this way, the petitioner shall have to pay a sum of Rs. 516.75 nP. as costs to the Respondent.

Election petition dismissed with costs. The petitioner to pay Rs. 516.75 nP. to the Respondent towards costs.

R. HANUMANTHA RAO, *Member.*

31-1-1963.

By order,

PRAKASH NARAIN,

Secretary to the Election Commission, India.